

## Office of the Secretary, Interior

## § 4.205

*Solicitor* means the Solicitor of the Department of the Interior or his or her authorized representative.

*Superintendent* means the BIA Superintendent or other BIA officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority.

*Testate* means the decedent executed a will before his death.

*Trust property* means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

*Will or last will and testament* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

[66 FR 32888, June 18, 2001; 66 FR 33740, June 25, 2001]

### § 4.202 General authority of administrative law judges.

Administrative law judges will, except as otherwise provided in § 4.205(b) and 25 CFR part 15, determine the heirs of Indians who die intestate possessed of trust property; approve or disapprove wills of deceased Indians disposing of trust property; accept or reject full or partial renunciations of interest in both testate and intestate proceedings; allow or disallow creditors' claims against estates of deceased Indians; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. Administrative law judges will determine the right of a tribe to take inherited interests and the fair market value of the interests taken in appropriate cases as provided by statute. They will review cases de novo, hold hearings as necessary or appropriate, and issue decisions in matters appealed from decisions of BIA deciding officials. Administrative law judges appointed under 5 U.S.C. 3105 will also hold hearings and

issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of BIA officials.

[66 FR 32889, June 18, 2001; 66 FR 33740, June 25, 2001]

### DETERMINATION OF HEIRS; APPROVAL OF WILLS; SETTLEMENT OF INDIAN TRUST ESTATES

#### § 4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) Administrative law judges shall hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an administrative law judge determines under paragraph (a) of this section that a trust patent did issue to an existing person or that separate persons did receive the allotments under consideration and any one of them is deceased, without having had his estate probated, he shall proceed as provided in § 4.202.

(c) If an administrative law judge determines under paragraph (a) of this section that a person did not exist or that there were more than one allotment issued to the same person, he shall issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

[36 FR 7186, Apr. 15, 1971; 36 FR 7588, Apr. 22, 1971]

#### § 4.204 Presumption of death.

(a) Administrative law judges shall receive evidence on and determine the issue of whether persons, by reason of unexplained absence, are to be presumed dead.

(b) If an administrative law judge determines that an Indian person possessed of trust property is to be presumed dead, he shall proceed as provided in § 4.202.

#### § 4.205 Escheat.

Administrative law judges shall determine whether Indian holders of